

*\$20.00*

# ITEL

RECORDATION NO. *9778-J* Filed 1425

OCT 26 1982 12:40 PM

## Rail Division INTERSTATE COMMERCE COMMISSION

Two Embarcadero Center  
San Francisco, California 94111  
(415) 955-9090  
Telex 342341 *2-239-031*

*9778-K*  
RECORDATION NO. Filed 1425

OCT 26 1982 12:40 PM  
October 8, 1982  
INTERSTATE COMMERCE COMMISSION

No. *9778-K*  
OCT 26 1982  
Date.....  
Fee \$ *90.00*  
ON  
ICC Washington, D. C.

Ms. Agatha Mergenovich, Secretary  
Interstate Commerce Commission  
Washington, D.C. 20423

Dear Ms. Mergenovich:

Pursuant to 49 U.S.C. Section 11303(a) and the Interstate Commerce Commission's rules and regulations thereunder, I enclose herewith on behalf of Itel Corporation for filing and recordation under the Lease Agreement dated as of March 15, 1978 (the "Lease") between Itel Corporation, Rail Division ("Itel") and The Texas Mexican Railway Company ("Lessee"), which was filed on October 17, 1978 at 3:00 P.M. and given recordation No. 9778, four counterparts each of the following documents:

Amendment No. 4 dated as of August 4, 1982 to the Lease between Itel and Lessee.

Amendment No. 5 dated as of August 24, 1982 to the Lease between Itel and Lessee.

The names and addresses of the parties to the aforementioned Amendments are:

1. The Texas Mexican Railway Company  
P.O. Box 419  
Loredo, Texas 78040
2. Itel Corporation, Rail Division  
Two Embarcadero Center, 24th Floor  
San Francisco, CA 94111

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OCT 26 12 31 PM '82  
I.C.C.  
FEE OPERATION BR

The equipment covered by the Amendments is one hundred eighty-six (186) 70-ton flush deck flatcars, 89'4" in length, AAR mechanical designation FC, currently bearing reporting marks within the series TM 400000 thru TM 400149.

Also enclosed are two checks in the amount of \$10.00 each for the required recording fees.


*Counterpart Jeff D. Bas*

*Mrs. blavis -  
we think  
Amendment 4 will  
be under  
9778-J, and  
Amendment 5 will  
be under  
9778-K,  
but please  
check to be  
sure*

Ms. Agatha Mergenovich, Secretary  
October 8, 1982  
Page Two

Please stamp all counterparts of the enclosed Amendments with your official recording stamp. You will wish to retain one (1) counterpart of each document for your files; it is requested that the remaining three (3) counterparts of each document be delivered to the bearer of this letter.

Sincerely,

  
Patricia Salas Pineda  
Counsel

PSP:dmm  
Enclosures

cc: Michael Walsh, Esq.  
Weil, Gotshal & Manges  
767 Fifth Avenue  
New York, New York 10020

Robert S. Clark, Esq.  
Senior Trust Officer  
First Security Bank of Utah, N.A.  
Corporate Trust Division  
79 South Main Street  
Salt Lake City, Utah 84111

Sandra Costa  
Itel Corporation

4778-3  
L-0328  
8/4/82

RECORDATION NO. 97787 1425

OCT 26 1982 12:10 PM

AMENDMENT NO. 4

INTERSTATE COMMERCE COMMISSION

**THIS AMENDMENT NO. 4** (the "Amendment") to that certain Lease Agreement (the "Agreement") made as of March 15, 1978 between **ITEL CORPORATION, RAIL DIVISION** ("Lessor") and **THE TEXAS MEXICAN RAILWAY COMPANY** ("Lessee") is made this 4th day of August, 1982 by and between Lessor and Lessee.

**WHEREAS**, Lessor and Lessee are parties to the Agreement, pursuant to which three hundred (300) flatcars ("Car(s)") bearing the reporting marks TM 400000-400299 have been leased and delivered by Lessor to Lessee.

**WHEREAS**, two (2) Cars bearing the reporting marks TM 400220 and TM 400227 were destroyed on or about June 15, 1980 and July 24, 1979, respectively;

**WHEREAS**, Lessor and Lessee agree that it is to their mutual benefit for Lessee to enter into a sublease agreement with a third party for a certain number of the Cars for a period of time to improve the utilization of and revenue from such Cars.

**NOW, THEREFORE**, in consideration of the promises and mutual covenants contained herein, the parties agree to amend the Agreement as follows:

1. All terms defined in the Agreement shall have their defined meanings when used in this Amendment.
2. Lessor consents to Lessee's entering into a sublease agreement (the "Sublease") with The Atchison, Topeka and Santa Fe Railway Company (hereinafter called "Sublessee") for one hundred eighty-six (186) of the Cars (i) of which one hundred forty-eight (148) are within the series 400000-400149, and (ii) of which thirty-eight (38) are within the series 400150-400224 (said subleased Cars to be hereinafter referred to as "Flatcar(s)") for a period of time to improve the utilization of and revenue from the Flatcars.
3. The term of the Sublease with respect to each Flatcar shall commence at 12:00 P.M. on the date and at the location that such Flatcar is restencilled with the Sublessee's reporting marks, and shall expire as to all of the Flatcars on the earlier to occur of (i) the date on which the Agreement is terminated or, (ii) one (1) year from the date on which fifty (50) percent of all the Flatcars are restencilled with Sublessee's reporting marks (the "Sublease Period"), with extension provisions as outlined in the Sublease.
4. During the Sublease Period only and solely with respect to the Flatcars, Section 3.D., which shall read as follows, is hereby added to the Agreement:

**"3.D. Restencilling**

Lessee shall be entitled, at Lessee's expense, to restencil the Flatcars with the railroad markings of Sublessee in compliance with all applicable regulations. Concurrent with any such restencilling, Lessor and Lessee

shall execute a Certificate of Restencilling (in the form of Exhibit A attached hereto) specifying the previous and current reporting marks of each Flatcar. Such Certificate of Restencilling shall become attached to and incorporated into this Agreement. During the term of this Agreement, Lessor may, at its expense, replace any or all of the Flatcars with similar equipment upon prior written notice from Lessor to Lessee."

Upon the expiration or early termination of the Sublease, Section 3.D. shall be deleted from the Agreement.

5. During the Sublease Period only and solely with respect to the Flatcars, Section 4 of the Agreement, as it now reads ("Old Section 4") shall be replaced by the following:

**"4. Record Keeping**

- A. Lessee shall, at its expense, prepare and file, with respect to the Flatcars, all documents relating to the registration, maintenance and record keeping functions as normally performed by a railroad with respect to railroad equipment of the type subject to this Agreement. Such matters shall include, but are not limited to the following: (i) preparation of AAR documents with respect to the Flatcars; (ii) registration of the Flatcars in the Official Railway Equipment Register and the Universal Machine Language Equipment Register ("UMLER"); and (iii) preparation of any reports as may be required from time to time by the Interstate Commerce Commission ("ICC") and/or any other regulatory agencies with respect to the Flatcars. Lessee shall register each Flatcar in the UMLER in such a manner that Lessor is allowed access to any required information with regard to each Flatcar. In addition, Lessee shall be responsible for any expenses incurred and rent lost as the result of any improper UMLER registration.
- B. Lessee shall perform all record keeping functions relating to the use of the Flatcars by Lessee and other railroads, including but not limited to, maintenance and repair, and billing in accordance with the AAR Interchange Rules. All record keeping performed by Lessee hereunder and all record of payments, charges and correspondence related to the Flatcars shall be separately recorded and maintained by Lessee in a form suitable for reasonable inspection by Lessor from time to time during Lessee's regular business hours. Lessor shall be entitled to make such inspection at will."

Upon the expiration or early termination of the Sublease, Old Section 4 shall be reinstated in the Agreement with respect to the Flatcars.

6. During the Sublease Period only and solely with respect to the Flatcars, Section 5 of the Agreement, as it now reads ("Old Section 5") shall be replaced by the following:

**"5. Maintenance, Tax and Insurance**

- A. Except as otherwise provided herein, Lessor shall, at its expense, perform or have performed inspections of, (other than interchange inspections), maintenance and repairs to, and servicing of the Flatcars as shall be necessary to maintain the Flatcars in good operating condition as specified in the AAR Interchange Rules, provided, however, that such repair, maintenance and servicing shall be performed at Lessee's expense in the event it was occasioned by the fault of Lessee, or arises in those instances in which the AAR Interchange Rules would assign responsibility to Lessee for the loss, damage, destruction or liability requiring such repair, maintenance or servicing. Lessee shall inspect all Flatcars interchanged to it to insure that such Flatcars are in good working order and condition and Lessee shall be liable to Lessor for any repairs required for damage not noted at the time of interchange.
- B. Lessor shall also make, at its expense, all alterations, modifications or replacement of parts as shall be necessary to maintain the Flatcars in good operating condition. Lessee may make running repairs, as defined in Exhibit B attached hereto, to facilitate continued immediate use of each Flatcar, but shall not otherwise make or cause to have made any repairs, alterations, improvements, or additions to any Flatcar without Lessor's prior written consent. Lessee shall be liable to Lessor for any revenues lost due to any unauthorized repair, alterations, improvement or addition. Title to any such alteration, improvement or addition shall be and remain with Lessor.
- C. As long as this Agreement shall remain in effect, Lessee shall be responsible for the Flatcars (i) while in Lessee's possession or control, and (ii) in the same manner that Lessee is responsible under Interchange Rules for similar equipment not owned by Lessee. Lessee shall, at all times while this Agreement is in effect, at its own expense, cause to be carried and maintained (a) physical loss or damage insurance with respect to the Flatcars while on Lessee's tracks, provided, however, that the Lessee may self-insure such Flatcars to the extent it self-insures equipment similar to the Flatcars and to the extent such self-insurance is consistent with prudent industry practice, and (b) public liability insurance with respect to third party personal injury and property damage, in each case said insurance shall be in such amounts and for such risks and with such insurance companies as are consistent with prudent industry practice; provided, however, that Lessee may self-insure against such liability to the extent such self-insurance is consistent with prudent industry practice, but in any event such insurance shall be at least comparable to insurance coverage carried by the Lessee in respect of similar equipment owned or leased by it. Lessee shall furnish to Lessor concurrently with the execution hereof certificates evidencing the aforesaid insurance. All insurance shall be taken out in the name of Lessee and shall name Lessor as

additional named insured, and shall also list Lessor as loss-payees on the property insurance policies. Said policies shall provide that Lessor shall receive thirty (30) days prior written notice of any material changes in coverage or cancellation thereof. Lessor may, at its option, re-evaluate the insurance coverage provided by Lessee and request additional coverage as deemed necessary.

- D. Lessee assumes responsibility for and agrees to pay, protect, save, keep harmless and indemnify Lessor and its successors against taxes, fees, levies, impost, duties or withholdings of any nature together with penalties, fines or interest thereon (taxes) imposed on, incurred by or asserted against: (1) the Flatcars, (2) lease, sublease or delivery of the Flatcars, (3) revenues earned by the Flatcars, including but not limited to mileage charges and/or car hire revenues, during the term of this Agreement, except taxes on income and franchise taxes imposed on Lessor. Lessee shall comply with all state and local laws requiring filing of ad valorem tax returns associated with the Flatcars and shall provide Lessor with a photostatic copy of the receipted ad valorem tax bill within thirty (30) days after receipt.
- E. In the event that any or all of the Flatcars require storage on Lessee's railroad lines at any time, Lessee shall be responsible for the following: (1) all reasonable transportation costs incurred to move the Flatcars to such storage location; (2) all reasonable transportation costs incurred in removing such Flatcars from the storage location; and (3) the actual costs incurred for the storage of each Flatcar for up to one hundred eighty (180) days unless this Agreement has been terminated prior to the expiration of the Initial Term, or prior to the expiration of the Extended Term during the Extended Term. If Lessor pays for any costs for which Lessee is responsible under this Section, Lessee shall reimburse Lessor for such costs within thirty (30) days from Lessee's receipt of Lessor's invoice."

Upon the expiration or early termination of the Sublease, Old Section 5 shall be reinstated in the Agreement with respect to the Flatcars.

- 7. During the Sublease Period only and solely with respect to the Flatcars, Section 6 of the Agreement, as it now reads ("Old Section 6") shall be replaced by the following:

**"6. Lease Rental**

**A. Definitions**

- (i) "Fixed Rent" shall be \$0.458 per Flatcar for each hour such Flatcar is on Lessee's railroad line.
- (ii) "First Rent Date" shall be the fifteenth (15th) day of the month immediately following the calendar month in which the Commencement Hour (as defined in Section 3.B.) occurs.

- (iii) "Last Rent Date" shall be the fifteenth (15th) day of the month immediately following the calendar month in which the "Termination Date" (as defined in Section 2.D.) occurs.
  - (iv) "Revenues" shall be the total revenues earned and due from other railroad companies for the use or handling of the Flatcars including, but not limited to, per diem and mileage, whether or not collected and received by Sublessee and without regard to any claimed abatement, reduction or offset. Upon the occurrence of any such abatement, reduction or offset, Sublessee shall, within thirty (30) days of Lessor's request, reimburse Lessor for such amounts.
  - (v) "Commencement Hour" with respect to each Flatcar, shall be the date and hour such Flatcar is placed for its initial loading on Sublessee's railroad lines.
  - (vi) "Termination Date" shall be, with respect to each Flatcar, the date this Agreement is terminated as to such Flatcar, whether pursuant to the expiration of the Initial Term or Extended Term or any early termination hereof.
- B. Sublessee shall pay to Lessor during the Term of this Agreement as rent for each Flatcar the following:
- (i) On the First Rent Date, an amount equal to the Fixed Rent multiplied by the number of on-line hours from and including the Commencement Hour to and including the last hour of the month in which such Commencement Hour occurs;
  - (ii) For the fifteenth (15th) day of each month thereafter, to and including the calendar month in which the Termination Date occurs, an amount equal to the Fixed Rent multiplied by the number of on-line hours in the prior month;
  - (iii) On the Last Rent Date, an amount equal to the Fixed Rent multiplied by the number of on-line hours from and including the first hour of the month in which the Termination Date occurs to and including the last hour of such Termination Date; and
  - (iv) Within ninety (90) days after the end of each Service Month (as hereinafter defined), an amount equal to the Revenues earned by the Flatcars for such Service Month. For the purposes hereof, Service Month shall be defined as the calendar month in which the Flatcars earn Revenues under the terms of the Agreement.
- C. (i) Lessee shall provide Lessor with such records as may be required to substantiate the following: (i) the date and hour

each Flatcar is placed for loading on Lessee's railroad lines pursuant to Section 3.B. and (ii) the date each Flatcar is returned to Lessor pursuant to Section 9.

- (ii) Upon Lessor's request, Lessee shall provide Lessor with any records of Lessee, including car hire summaries and detailed reports, as Lessor deems necessary to substantiate Revenues and Revenues actually received by Lessee. Further, Lessor shall be entitled to visit Lessee at any time during normal business hours to review any and all records required to determine Revenues and Revenues actually received by Lessee."

Upon the expiration or early termination of the Sublease, Old Section 6 shall be reinstated in the Agreement with respect to the Flatcars.

- 8. With respect to the Flatcars only, the number thirty (30) shall be substituted for the number ten (10) each time it appears in Section 8(i) and (ii).
- 9. During the Sublease Period only and solely with respect to the Flatcars, Section 9 of the Agreement as it now reads ("Old Section 9") shall be replaced by the following:

**"9. Termination**

- A. Upon the Termination Date (as defined in Section 6.A.(vi)) with respect to each Flatcar, Lessee, at its expense, shall promptly move such Flatcar to a shop on Lessee's railroad tracks and shall promptly notify Lessor of such shop. Subsequent procedures, shall be as follows:

Lessee shall restencil the Flatcars in accordance with Lessor's instructions and shall return the Flatcars in the same condition as originally received by Lessee, normal wear and tear excepted. Restencilling, with respect to each Flatcar, shall include the following: (a) removal of existing reporting marks and all company logos of Lessee; (b) complete cleaning subsequent to the removal of markings; (c) application of new reporting marks as designated by Lessor; and (d) any transportation involved in moving each Flatcar to and from a suitable work area to perform the restencilling set forth in this Section. Lessee shall not remove Lessee's railroad marks from any Flatcar without the prior written consent of Lessor. Subsequent to the completion of the restencilling of the Flatcars, Lessee shall, upon Lessor's request and at Lessor's sole option, and at Lessee's expense, deliver the Flatcars to any interchange points designated by Lessor on Lessee's railroad tracks and/or provide outbound loads for the Flatcars. Prior to such delivery of the Flatcars, Lessee shall provide storage for the Flatcars, as set forth in Section 9.B., upon the request of Lessor.



- B. In the event of expiration of the Initial Term or Extended Term, or termination by Lessee of this Agreement prior to the expiration of the Initial Term or Extended Term, the restencilling and storage of each Flatcar set forth in Section 9.A. shall be at Lessee's expense; provided, however, that Lessee shall be responsible for the cost of storage of each Flatcar for up to one hundred eighty (180) days following the Termination Date only. Concurrent with any such restencilling, Lessor and Lessee shall execute a Certificate of Restencilling (in the form of Exhibit A attached hereto) specifying the previous and current reporting marks of each Flatcar. In the event of termination by Lessor of this Agreement prior to the expiration of the Initial Term or Extended Term, the restencilling and storage of each Flatcar set forth in Section 9.A. shall be at Lessor's expense."

Upon the expiration or early termination of the Sublease, Old Section 9 shall be reinstated in the Agreement with respect to the Flatcars.

10. Nothing set forth in this Amendment with respect to the Agreement represents a waiver by the parties hereto of any rights under the Agreement or the Bankruptcy Code and is not an assumption of the Agreement under the Bankruptcy Code, and in the event of the rejection of the Agreement by order of the Bankruptcy Court under the Bankruptcy Code, Lessee may claim pre-petition damages, if any, with respect to such rejection of the Agreement.
11. Except as expressly modified by this Amendment, all terms and provisions of the Agreement shall remain in full force and effect with respect to all of the Cars subject to the Agreement, including the Flatcars.
12. This Amendment may be executed by the parties hereto in any number of counterparts and all said counterparts taken together shall be deemed to constitute one and the same instrument.

ITEL CORPORATION,  
RAIL DIVISION

By: 

Title: President

Date: 9-15-82

THE TEXAS MEXICAN  
RAILWAY COMPANY

By: 

Title: Chmn + C.E.O.

Date: August 13, 1982

L-0328

EXHIBIT A

CERTIFICATE OF RESTENCILLING

Previous  
Flatcar  
Marks

Current  
Flatcar  
Marks

Date of  
Restencilling

Previous  
Flatcar  
Marks

Current  
Flatcar  
Marks

Date of  
Restencilling

Itel Corporation, Rail Division

A handwritten signature in dark ink, appearing to be 'M. V. ...', is written over a horizontal line.

The Texas Mexican Railway Company  
Authorized Representative

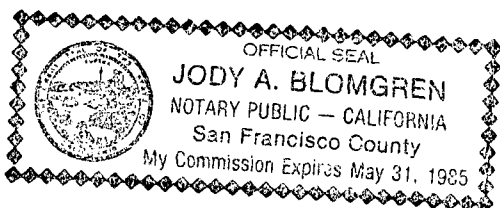
EXHIBIT B

Running Repairs

Angle Cocks  
Air Hose  
Train Line  
Operating Levers in Brackets  
Sill Steps  
Grab Irons  
Brake Shoes  
Brake Shoe Keys  
Brake Connecting Pin  
Brake Beam Wear Plates  
In-Date-Test  
Air Brakes  
Hand Brakes  
Truck Springs  
Lube of Hitches  
Cotter Keys  
Roller Bearing Adapters  
Air Hose Supports  
Wheels  
Knuckles  
Knuckle Pins  
Slack Adjusters  
Pedestal Locks  
Couplers  
End of Car Cushioning  
Coupler Carriers  
Center Plates

STATE OF CALIFORNIA            )  
  )  
COUNTY OF SAN FRANCISCO    ) ss:

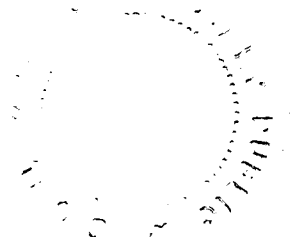
On this 15<sup>th</sup> day of September, 1982, before me personally appeared Edward M. O'Dea, to me personally known, who being by me duly sworn says that such person is President of Itel Corporation, Rail Division, that the foregoing Amendment No. 4 was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



Jody A. Blomgren  
Notary Public

STATE OF TEXAS                                )  
  )  
COUNTY OF WEBB                            ) ss:

On this 13th day of August, 1982, before me personally appeared Mr. A. R. Ramos, to me personally known, who being by me duly sworn says that such person is Chairman & Chief Executive Ofc. of The Texas Mexican Railway Company, that the foregoing Amendment No. 4 was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



Dandra McWhorter  
Notary Public